

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-140030
		C-140031
Plaintiff-Appellee,	:	C-140032
		TRIAL NOS. B-1300409
vs.	:	B-1304007-A
		B-1304640
KEMUEL DAVIS SPIVERY,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

These are criminal appeals of convictions entered for trafficking in heroin, possession of heroin, felonious assault on a peace officer, trafficking in cocaine, possession of cocaine, having a weapon while under a disability and carrying a concealed weapon. Kemuel Davis Spivery challenges his conviction for felonious assault on a police officer. We conclude that the evidence presented was sufficient to show that Mr. Spivery knowingly caused physical harm to a police officer by driving his car into the police officer's car, so we affirm the judgment of the trial court.

On January 15, 2013, Cincinnati police officer Beth Roach conducted an undercover purchase of heroin from Mr. Spivery. Three days later, Officer Roach contacted Mr. Spivery to purchase another gram of heroin. They arranged to meet in a parking lot. This time, after making the purchase, Officer Roach gave the "hit signal" so that fellow officers could arrest Mr. Spivery. Mr. Spivery, who was in his car at the time the signal was given, attempted to back his car up to flee the police

officers. His car hit a police cruiser containing police officers Roger Pohlman and Brendan McKinney. After being thwarted from fleeing in reverse, he threw the car into drive and hit an unmarked police car driven by Officer Robert Rockel. At the time of the impact, Officer Rockel had begun to exit the car, and was standing between the car door and the driver's seat. Officer Rockel testified that he was knocked back twice when Mr. Spivery's car hit his car.

Mr. Spivery was subsequently charged with two counts of trafficking in heroin, one count of possession of heroin, and three counts of felonious assault on peace officers. The case was tried to the bench with two other cases that Mr. Spivery had pending. During the trial, Mr. Spivery did not contest the drug charges against him. Rather, he focused on the felonious assaults, arguing that he had not knowingly caused harm to the officers. At the conclusion of the trial, the court found him guilty of the drug charges, guilty of the felonious assault of Officer Rockel, and not guilty of the felonious assaults of Officers Pohlman and McKinney. He was sentenced accordingly.

Because they are related, we consider Mr. Spivery's assignments of error together. In the first, he asserts that his conviction for felonious assault was not supported by the evidence in the record. In the second, he asserts that the trial court erred in convicting him because there was not sufficient evidence that he had acted knowingly. We are not persuaded.

"A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). Despite Mr. Spivery's contention that he did not intend to harm Officer Rockel, the evidence was sufficient to show that he had to have been aware that driving his car into another car would probably cause injury. The video of the incident shows Officer Rockel driving to a location in front of Mr. Spivery's car and beginning to exit the car. A reasonable person would know that hitting a car in

such a situation would probably cause harm to the person exiting the car. Our review of the record, including the video, reveals that the state adduced substantial, credible evidence from which the trial court could have reasonably concluded that the state had proved beyond a reasonable doubt the elements of felonious assault on a peace officer. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. The assignments of error are overruled. The judgment in the case numbered C-140030 is affirmed.

We note that in the case numbered B-1304640, which was the subject of the appeal numbered C-140032, the sentencing entry incorrectly states that the sentences in those cases were made consecutive to the sentences in the other cases. At the sentencing hearing, the trial court stated that the sentences in B-1304640 would be concurrent with one another and concurrent with Mr. Spivery's other sentences. We therefore remand the case numbered C-140032 so that the trial court can correct the entry.

Mr. Spivery raised no assignments of error as to the convictions in the case numbered C-140031. We therefore dismiss that appeal.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., HENDON and DEWINE, JJ.**

To the clerk:

Enter upon the journal of the court on August 22, 2014  
per order of the court \_\_\_\_\_.  
Presiding Judge